

AG Contract No.: KR04-1593TRN
ADOT ECS File No.: JPA 04-116
Project: Traffic Interchange
Section: US 95 & I8
TRACS: H6118 01C
Budget Source Item No.: 26104

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF YUMA

THIS AGREEMENT is entered into this date of September 12 2005 pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF YUMA, acting by and through its MAYOR and CITY COUNCIL, (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this Agreement and has by resolution a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State and City are in mutual Agreement to accelerate the construction of the traffic interchange (TI) located at US 95 and I8, under pass #1380, herein after referred to as the Project. The cost of the Project is estimated at \$400,000.00 for the design, construction, construction engineering and administration costs. Both parties have agreed to share 50% of all the actual cost of the Project, with the City's obligation not to exceed \$200,000.00.

4. The parties hereto agree to and acknowledge the following conditions: a) The estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project; b) The parties shall perform their responsibilities consistent with this Agreement; and c) Any change or modification to the Project will only occur with the mutual written consent of the parties.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

NO. 27715
Filed with the Secretary of State
Date Filed: 9-12-05
Janice K. Brewer
Secretary of State
By: [Signature]

II. SCOPE OF WORK

1. The State shall:

a. Prepare and provide design plans, specifications and other such documents and services required for construction bidding and construction of the Project, and submit same to the City for concurrence.

b. Advertise for bids and award one or more construction contract(s) for the Project. Administer contracts for the Project and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by Project delays attributable to the State

c. Upon completion of the Project perform the final inspection and notify the City in writing that the Project has been constructed in accordance with the Project documents and has been satisfactorily completed.

d. Upon completion and acceptance of the Project by both parties, provide proper maintenance for the Project.

e. Upon execution of this Agreement, provide the City with an itemized list estimating the Project cost along with an invoice for reimbursement, to the State for it's 50% of all actual costs for design, construction, construction engineering and administration costs, with the City's obligation not to exceed \$200,000.00.

2. The City shall:

a. Review the design documents required for construction of the Project, and provide comments to the State as appropriate.

b. Confer with and obtain written consent from the State on Project-related contract modifications.

c. Be responsible for any design consultant and contractor claims for additional compensation caused by Project delays attributable to the City.

d. Upon execution of this Agreement, and receipt of an invoice from the State, remit to the State it's 50% share of all actual costs for the Project including all fixed rates, with the City's obligation not to exceed \$200,000.00.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion and reimbursement from the City. Provisions for maintenance will be provided by the State. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon (30) thirty-days written notice to either party.

2. Each party (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs or expenses including reasonable attorney's fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury or any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Sections 38-511.

5. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Sections 12-1518

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph, nor shall the City be obligated in excess of the sum of \$200,000.00.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007 FAX (602) 712-7424

City of Yuma
Attn: City Administrator
One City Plaza
PO Box 13014
Yuma, AZ 85366-3014


11. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written

THE CITY OF YUMA

STATE OF ARIZONA

Department of Transportation

By 
MARK S. WATSON
City Administrator

By 
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operations

ATTEST

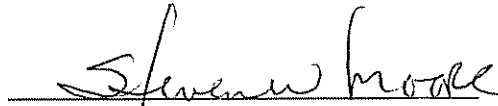
By 
BRIGITTA M. KUIPER
City Clerk

JPA 04-116

APPROVAL OF THE CITY OF YUMA

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF YUMA, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this _____ day of _____, 2005.



City Attorney

RESOLUTION NO. R2005-79

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUMA,
ARIZONA, RATIFYING AND AUTHORIZING AN INTERGOVERNMENTAL
AGREEMENT WITH THE STATE OF ARIZONA, FOR THE ACCELERATION
OF BRIDGE DECK REPLACEMENT ON US HIGHWAY 95 AT FEDERAL
INTERSTATE HIGHWAY 8**

WHEREAS, the City of Yuma (City) undertook the construction of infrastructure improvements immediately to the East of the intersection of US Highway 95 (US 95) and Federal Interstate Highway 8 (I-8) during Calendar Year 2004; and,

WHEREAS, the State of Arizona (State) determined that the US 95 bridge deck at I-8 to be in need of replacement and that replacement was scheduled to occur during and following the construction activities of the City; and,

WHEREAS, the joint sponsorship of acceleration of the State's bridge deck replacement project would be of benefit to the State, to the City and to the motoring public.

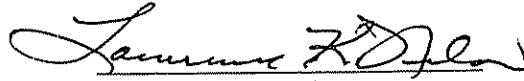
NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Yuma, Arizona, as follows:

SECTION 1: The actions of City staff to accommodate and negotiate the acceleration of the State of Arizona US Highway 95 bridge deck replacement at Federal Interstate Highway 8 are ratified as necessary and beneficial to the City of Yuma.

SECTION 2: The City Administrator is authorized and directed to execute an Intergovernmental Agreement with the State of Arizona, as shown in Exhibit A, attached hereto and by this reference made a part hereof, to provide funding to the State of Arizona, for the acceleration of the US Highway 95 bridge deck replacement at Federal Interstate Highway 8.

:
Passed and adopted this 3rd day of August, 2005.

APPROVED:



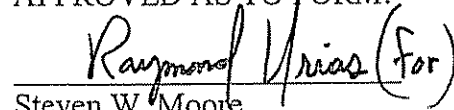
Lawrence K. Nelson
Mayor

ATTESTED:



Brigitta M. Kuiper
City Clerk

APPROVED AS TO FORM:



Steven W. Moore
City Attorney

INTERGOVERNMENTAL AGREEMENT

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AND
THE CITY OF YUMA

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Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ. 85007 FAX (602) 712-7424

City of Yuma
Attn: City Administrator
One City Plaza
PO Box 13014
Yuma, AZ 85366-3014

11. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written

THE CITY OF YUMA

STATE OF ARIZONA
Department of Transportation

By _____
MARK S. WATSON
City Administrator

By _____
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operations

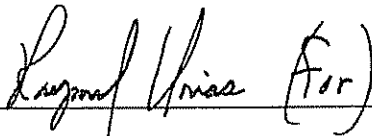
ATTEST

By _____
BRIGITTA M. KUIPER
City Clerk

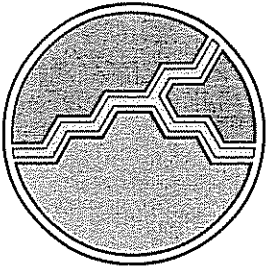
APPROVAL OF THE CITY OF YUMA

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF YUMA, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 26 day of July, 2005.



City Attorney



City of YUMA

Office of the City Clerk

One City Plaza
P.O. Box 13012
Yuma, Arizona 85366-3012
(928) 373-5035
FAX (928) 373-5036
TTY (928) 373-5149

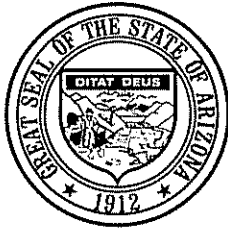
CERTIFICATION

I, Edna M. Martin, do hereby certify that I am the duly appointed Deputy City Clerk of the City of Yuma, Arizona, and that the attached resolution, Resolution No. R2005-79, is a true and correct copy of the resolution on file in the Office of the City Clerk.

Edna M. Martin, Deputy City Clerk

8-8-05

Date



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION

Susan E. Davis
Assistant Attorney General

Direct: 602-542-8855
Fax: 602-542-3646

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1593TRN (JPA 04-116), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED Sept. 1, 2005.

TERRY GODDARD
Attorney General

Susan E. Davis
SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:dgr
Attachment
922450